



NICHOLAS GIBSON

MAIN AREAS OF PRACTICE:

Arbitration
Competition and Regulation
Commercial Law
Crime and Regulatory
EU Law
Fraud, Financial and Business
Crime
Human Rights
Public Law
Public and Private International
Law
Sports Law
Tax Law
Telecommunications

Solicitor: 2004
Called to the Bar: 2009

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Competition and Regulation

Recent and notable examples of his experience in Competition and Regulation include those set out below:

UK Trucks Claim Limited v Fiat Chrysler Automobiles N.V. and others (2020-2022) Representing the applicant and proposed class representative (with Rhodri Thompson QC) in its application to the Competition Appeal Tribunal for a collective proceedings order permitting it to bring follow-on collective proceedings under s.47B of the Competition Act 1998 arising out of the European Commission's decision regarding unlawful cartelised behaviour among producers of medium and heavy trucks in the EEA from 1997 to 2011.

Mobile ecosystems market inquiry (2021-2022) Advising unled on issues relating to the CMA's market study into mobile ecosystems, and related consultations by DCMS and BEIS regarding proposed *ex ante* regulation of digital markets.

Cefetra Ltd v Quality Freight and others (2021) Representing the claimant importer of raw materials for supply to the animal feed sector (with Rhodri Thompson QC) in its claim in the Business & Property Courts (Competition List) against the owners and operators of the Port of Liverpool and Clydeport for breach of competition law, breach of contract and breach of confidence.

Complaint to ORR (2021) Sole counsel advising on a competition law complaint to the Office of Rail and Road arising from alleged abuse of a dominant position in the rail freight sector.

Advising an online gaming company (2021) Sole counsel advising on possible claims for breach of UK and EU competition law in the online gaming sector.

Banks Renewables Ltd v Secretary of State for Business, Energy and Industrial Strategy (2019-2020) Acting (unled and with Aidan O'Neill QC) for Banks Renewables in its judicial review challenge on grounds including State aid and general principles of EU law against the Secretary of State's decision to exclude onshore wind from access to government subsidies.

Online platforms and digital advertising market inquiry (2019-2020) Advising unled on issues arising from the CMA's market study into online platforms and digital advertising and related matters.

Google Android (2019-2021) Advising unled on issues arising from the EU Commission's infringement decision in Case AT.40099 Google Android and related matters.

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Ofgem Competition Act 1998 investigation (2016-2019) Advising Ofgem unled on issues arising in the context of its investigation into whether Economy Energy, E (Gas and Electricity) and Dyball Associates infringed Chapter I of the Competition Act 1998.

Advising a leading EU tech company (2019) Advising unled on possible claims for breach of EU competition law arising from the vertical supply arrangements of a rival leading US tech company.

Eurostar International Ltd v ORR (2019) Acting (with Jessica Simor QC) for Eurostar in judicial review proceedings arising from the consultation process relating to ORR's 2019 periodic review of the business operating the 'High Speed 1' rail link between St Pancras and the Channel Tunnel.

Unlockd Ltd and others v Google Ireland Ltd and others (2018) Acting (unled and with Rhodri Thompson QC) for an innovative tech start-up suing Google for abuse of its dominant position in relation to Google Play and AdMob products and related applications for interim injunctive relief and regarding jurisdiction.

R (Sky Blue Sports & Leisure Limited and others) v Coventry City Council (No.1 and No.2) (2014-2019) Acting (with Rhodri Thompson QC) for the owners of Coventry City Football Club in two related judicial review claims before the Administrative Court, Court of Appeal and in seeking permission to appeal to the Supreme Court, challenging two of Coventry City Council's decisions as unlawful State aids: first, to lend £14.4million to its insolvent subsidiary Arena Coventry Limited (the company which held the lease of and managed the Club's home ground); and, secondly, to grant Wasps, as ACL's new owners, an extension of ACL's lease by more than 200 years, which increased its value by c.£30m in return for c.£1m in consideration.

Advising a leading US tech company (2018) Advising unled on possible claims for breach of EU competition law in the context of trademark proceedings.

Heathrow Airport Limited v ORR (2016-2017) Defending (with Rhodri Thompson QC) against HAL's claim for judicial review of ORR's decision regarding the costs which HAL could recover from Crossrail for the use of the 'Heathrow Spur' connecting Heathrow airport to Paddington, and advising on HAL's subsequent appeal until it was discontinued.

SONI Limited v Northern Ireland Authority for Utility Regulation (2017) Advising the CMA unled on its determination of the energy licence modification appeal by SONI against a decision by NIAUR to modify the conditions of SONI's electricity transmission licence.

Advising a leading EU tech company (2017) Advising on possible competition law issues arising in the context of proposed corporate restructuring.

Advising a leading EU logistics company (2016) Advising unled on State aid law and the application of the guidance on regional investment aid in the relation to funding for proposed expansion of the business.

Advising the Home Office on procurement issues (2016) Advising unled on various issues in the context of modifications to a public procurement by the Home Office.

Shiny Sky Ltd v London Luton Airport Operations Ltd (2016) Acting for a taxi service provider (with Paul Nicholls QC) in a claim for breach of public procurement law in respect of the tender process for the provision of ground transportation services at Luton Airport.

Ecotricity Group Limited and another v Tesla Motors Inc and another (2014) Defending (unled and with Rhodri Thompson QC) the UK's leading

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green electricity company and its 'Electric Highway' network of charging points for electric vehicles ("EVs") at motorway service stations and other sites against a counterclaim by a US manufacturer of EVs alleging breaches of competition law in relation to the provision of EV charging services in the UK.

Lafarge Tarmac Holdings Limited v the Competition and Markets Authority; Hope Construction Materials Limited v the Competition and Markets Authority (2014) Defending the CMA (as junior counsel to Rhodri Thompson QC) against challenges to the package of remedies (and in particular the divestiture of a cement plant) proposed by the Competition Commission to address coordination in GB cement markets, which the CC had found following its Aggregates market investigation under Part 4 of the Enterprise Act 2002; and resisting Lafarge Tarmac's application to rely on new expert evidence.

Complaint from Thus Plc and Gamma Telecom Limited against BT about alleged margin squeeze in wholesale call pricing (2013) Representing BT (as junior counsel to Rhodri Thompson QC) in Ofcom's investigation into an alleged breach of Chapter II of the Competition Act 1998 and Article 102 TFEU (abuse of a dominant position), leading to Ofcom concluding that BT's conduct did not constitute an abuse of its dominant position and that there were therefore no grounds for action.

Everything Everywhere and others v Office of Communications (MCT appeals) Representing the Competition Commission unled before the Competition Appeal Tribunal in joined appeals by Everything Everywhere and other parties against Ofcom's 2011 Wholesale Mobile Voice Call Termination Statement, advising in relation to the Commission's determination of the questions referred to it and defending that determination (with Michael Bowsher QC) against challenges on judicial review grounds before the Tribunal and on appeal to the Court of Appeal.

Investigation into the supply of products to the construction industry (2013) Advising the Office of Fair Trading (with James Lewis QC) in relation to a criminal investigation into suspected cartel activity in the supply of products to the construction industry. Appearing in the High Court on applications for warrants under section 194 of the Enterprise Act 2002 to carry out searches at a number of locations across the UK.

La Gaitana Farms S.A. and others v British Airways plc (2013) Acting (with Rhodri Thompson QC) for South American flower growers in their follow-on competition damages claim arising from a price-fixing cartel in relation to air freight services provided by British Airways and other international carriers of air cargo.

Marine Management Organisation v Craig (2013) Representing (with Rhodri Thompson QC) an inshore fisherman accused of fishing in breach of his quota allocation, and appearing in the Crown Court and on appeal to the Court of Appeal (Criminal Division) on his application that the prosecution be stayed as an abuse of process because UK quota allocation is discriminatory and breached general principles of EU law and EU law on State aid.

Recall Support Services Ltd v Secretary of State for Culture, Media and Sport (2013) Defending (as junior to Philip Moser QC) the Secretary of State against a Francovich damages claim in the Chancery Division, in which the operators of GSM gateways (a device incorporating SIM cards issued by mobile network operators) alleged that a restriction on such devices under UK law constituted a serious breach of EU law, and advising on Article 102 (refusal to supply) issues arising in the context of causation.

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TalkTalk and Sky v Office of Communications; BT v Office of Communications (LLU/WLR appeals) (2013) Representing the Commission unled before the Competition Appeal Tribunal in appeals by TalkTalk and Sky and by BT against Ofcom's 2012 Local Loop Unbundling and Wholesale Line Rental Statement, and subsequently advising (with Kieron Beal QC) in relation to the Commission's determination of the questions referred to it.

Verizon and Vodafone v Office of Communications (BCMR/LLCC appeal) (2013) Representing BT (with Daniel Beard QC) as intervener in a joint appeal by Verizon and Vodafone against Ofcom's 2013 Business Connectivity Market Review ("BCMR") and Leased Lines Charge Control ("LLCC") Statement, and subsequently appearing for BT in hearings before the Competition Commission in the Commission's determination of the questions referred to it by the Tribunal.

R v Euroteam AS; OFT v Gyrré (2012) Advising on defences under the European laws of competition and free movement of goods and services to alleged offences of selling Olympic tickets without authorisation under the London Olympic Games and Paralympic Games Act 2006. Further advising (with Rhodri Thompson QC) in relation to an application by the Office of Fair Trading to the High Court for an interim enforcement order under Part 8 of the Enterprise Act 2002 arising from alleged Community infringements under consumer protection legislation.

International Marketing Limited v the Office of Fair Trading; Bankruptcy Limited v the Office of Fair Trading (2011) Representing the OFT (with Eleni Mitrophanous) in joined appeals to the First-tier Tribunal by companies formerly licensed under the Consumer Credit Act 1974 against the OFT's determinations to revoke those licences, including advice on various issues under the 1974 Act and Part 9 of the Enterprise Act 2002, the Data Protection Act 1998 and the Companies Act 1985.

Local Bus Services Market Investigation (2011) Instructed (with Daniel Beard QC) to advise the Competition Commission on issues arising from its investigation into the local bus services market in the United Kingdom (excluding London and Northern Ireland) under Part 4 of the Enterprise Act 2002.

Scot Young Research Limited v NHS Business Services Authority (2011) Representing (with Rhodri Thompson QC) a supplier of cleaning products to the NHS in its claim in the Chancery Division for breach of public procurement regulations, and advising on mediation and settlement.

TalkTalk v Office of Communications; BT v Office of Communications (WBA appeals) (2011) Representing the Commission unled before the Competition Appeal Tribunal and otherwise advising the Commission in appeals by TalkTalk and by BT against Ofcom's 2011 Wholesale Broadband Access Statement, including advice in relation to the Commission's determination of the questions referred to it in BT's appeal.

Cable & Wireless UK v Office of Communications (PPC appeal) (2010) Legal adviser to the Competition Commission on a reference from the Competition Appeal Tribunal in the appeal by Cable & Wireless against Ofcom's 2009 Leased Line Charge Control Statement, liaising with expert advisers on economics and accountancy issues, and leading the preparation of the Commission's determination of the questions referred to it. Also instructed (with David Unterhalter QC) for the Commission in BT's subsequent challenge on judicial review grounds; BT withdrew its challenge prior to trial.

R (CGTSN and Global Knafaim Leasing) v the Civil Aviation Authority and BAA (2010) Representing (with Rhodri Thompson QC) an aircraft leasing

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company in its challenge under the Human Rights Act 1998 and UK/EU competition law and EU fundamental rights to the detention and threatened sale of its aircraft, and in its subsequent appeal to the Court of Appeal; the matter settled before the hearing of the appeal.

PLUS Markets plc v London Stock Exchange plc (2008) As solicitor, acting for the London Stock Exchange in proceedings before the Commercial Court brought by PLUS Markets challenging the AIM trade reporting rules on competition and free movement grounds; the case settled shortly before trial.

Investigation into an alleged collective boycott and alleged price fixing by certain recruitment agencies (2007) Acting for Hays Specialist Recruitment in the OFT's "Construction Recruitment Forum" investigation into complaints of collective boycotting and price-fixing in the supply of candidates to the construction industry.

SanDisk Corpn v Koninklijke Philips Electronics NV and others (2007) As solicitor, acting for a group of major European technology companies in an action for alleged breach of competition law in the Chancery Division, including a challenge to the jurisdiction of the English courts under the "Brussels" Regulation 44/2001/EC.

Banana importers: cartel investigation (2006) As solicitor, acting for the leniency applicant in an investigation into a cartel among suppliers of bananas: see the related European Commission press release: IP/08/1509.

National Association of Licensed Opencast Operators v International Power plc and Powergen plc; South Wales Small Mines Association v International Power plc and Powergen plc (2006) As solicitor, acting for an international energy company in the context of the European Commission's investigation into alleged systematic price discrimination in the prices paid to coal suppliers, arising from complaints by coal industry representative bodies.

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